

**BYLAWS**  
**OF**  
**WorkSafeMT™ ~~FOUNDATION~~ CORPORATION**  
(a Montana Nonprofit Public Benefit Corporation)

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**1. CORPORATION NAME, PURPOSES, POWERS AND OFFICES.**

**1.1 Name and Location.**

This Corporation shall be known as the WorkSafeMT™ ~~Foundation~~ Corporation. Offices of the Corporation shall be located in the city of Helena, Montana, and in such other localities as may be determined by the Board of Directors.

**1.2 Authority.**

This Corporation is a public benefit corporation incorporated under, and shall be operated according to the Montana Nonprofit Corporation Act (the “Act”). The Corporation is organized and shall be operated exclusively for charitable and educational purposes within the meaning of Code Section 501(c)(3).

**1.3 Purposes.**

The Corporation shall have the following primary purposes:

- (a) To promote and improve the culture of occupational health and safety in Montana through the use of the State-Wide Safety Initiative, through health and safety management systems, and through other related programs and activities;
- (b) To assist injured workers in recovering from on the job injuries and occupational diseases by promoting effective stay-at-work and return-to-work programs; and
- (c) To receive and disburse funds, property and gifts of any kind for the benefit of the above two purposes.

**1.4 Powers.**

(a) The general powers are granted to the corporation by the Montana Nonprofit Corporation Act, § 35-2-118, MCA., ~~are limited in that the corporation may not act in any way on any major funding or program decisions, projects or initiatives until those decisions, projects or initiatives have been approved by the Labor Management Advisory Council on Workers Compensation (LMAC) or any successor thereto. Once approved by the LMAC, the corporation may exercise all the general powers granted by § 35-2-118, MCA.~~

(b) The corporation shall not engage in any activities or exercise any powers that are not in furtherance of the stated purposes of the corporation.

### **1.5 Registered Office.**

The registered office of this Corporation required by the Act to be maintained in the state of Montana may be, but need not be, identical with the principal office in the state of Montana, and the address of the registered office and registered agent may be changed from time to time by resolution of the Board of Directors.

## **2. MEMBERS**

The corporation shall have no members.

## **3. BOARD OF DIRECTORS**

### **3.1 Governing Powers.**

Subject to the powers as limited in the Articles of Incorporation, the Board of Directors has supervision, control and direction of the affairs of the Corporation, and shall actively promote and pursue the Corporation's objectives, ~~and shall supervise the disbursement of the Corporation's funds.~~

The Board may adopt such policies and rules and regulations for the conduct of its business as shall be deemed advisable, and may, in the execution of the powers granted, delegate certain of its authority and responsibility to one or more committees or task forces. Any committee or task force shall consider and act upon all committee or task force recommendations, and may also consider such other matters regarding the Corporation as it deems appropriate, or as are requested for consideration by the Board.

### **3.2 Composition and Manner of Selection.**

The Board shall consist of ~~no less than nine (9) nor more than twenty seven (27)~~ twenty-one (21) voting members, ~~as shall be fixed from time to time by resolution of the Board of Directors.~~ Following the initial Board members, the members of the Board of Directors shall be elected by the Board of Directors. Terms of office shall begin on the date of the ~~first~~ annual corporation meeting following the election of any Board member, or on the date of election if the Board member is elected at the annual corporate meeting.

### **3.3 Tenure of Office; Representation of Stakeholders.**

- (a) ~~At the organizational meeting, the initial Directors appointed by the Incorporator shall be divided into three groups as designated by the Incorporator to indicate initial terms of office. Group One shall serve a term of one year, Group Two shall serve a term of two years, and Group Three shall serve a term of three years. Thereafter, at~~ At each Annual Meeting of the Board of Directors, a number of Directors equal to those whose terms have expired shall be elected for a term of three years. Such election shall be by

a majority of the Board of Directors.

- (b) ~~At the organizational meeting, the initial Directors appointed by the Incorporator shall each be appointed to represent a particular type of stakeholder group. The stakeholder groups include the following: employees, employers, health care providers, insurers, self insurers, the state fund, governmental regulators of safety and workers' compensation benefits, educators, youth, and any other types of stakeholder groups closely involved in assuring safe work places or providing workers' compensation benefits to injured workers. As the terms of office expire, nominees or if a Director resigns or leaves for any reason, Directors who are nominated for the open position are only eligible for election by the Board of Directors if the individual represents the same or similar stakeholder group as the departing Director. Directors shall represent stakeholder groups in the following manner:~~
- (i) Five (5) Directors shall represent labor.
  - (ii) Five (5) Directors shall represent management.
  - (iii) Three (3) Directors shall represent government, with federal, state and local government being represented.
  - (iv) Three (3) Directors shall represent healthcare providers, with the specialties of occupational medicine, physical therapy and case management being represented.
  - (v) Three (3) Directors shall represent workers' compensation insurers, with Plan 1, Plan 2 and Plan 3 being represented.
  - (vi) Two (2) Directors shall be representatives-at-large.
- (c) ~~Each Director shall hold office until his or her successor shall have been duly elected.~~

### **3.4 Proxy Voting.**

Proxies and proxy voting shall not be allowed on behalf of any Board member.

### **3.5 Vacancies.**

Any vacancy occurring in the Board of Directors because of death, resignation, removal, disqualification, or otherwise, ~~or any Directorship to be filled by reason of an increase in the number of Directors,~~ shall be filled by the Board of Directors at any meeting thereof. Vacancies on the Board of Directors shall be filled by election by a majority of the Board of Directors. Nominees for an open position are only eligible for election if the individual represents the same stakeholder group as the departing Director. A Director elected to fill a vacancy shall finish the term of the departing Director and is eligible for re-election at the Annual Meeting.

The Executive Committee shall be responsible for the recruitment and nomination of prospective new Directors for Board approval. The Executive Committee shall review each application for membership on the Board of Directors; and present a recommendation to the Board

of Directors for action on the election of each new Director to fill a vacancy at the next scheduled Board meeting or to fill an expired term at the next Annual Meeting.

### **3.6 Removal.**

A Director may be removed, with or without cause, if a majority of the Directors present at a duly constituted meeting votes for the removal. Additionally, a Director shall be removed for three (3) consecutive unexcused absences from meetings of the Board of Directors.

### **3.7 Resignation.**

Directors are expected to fulfill their terms on the Board of Directors. A Director may resign at any time by delivering written notice to the Board of Directors. Unless the notice specifies a later effective date, a resignation is effective when the notice is delivered.

### **3.8 Regular Meetings.**

The Board of Directors shall hold regular meetings on a designated day to be established by the Board. If it appears that a quorum of the Board will be unable to attend a regular meeting, the meeting may be rescheduled or cancelled.

### **3.9 Special Meetings.**

Special meetings may be held by the Board of Directors at the discretion of the Chair of the Board or upon the written request of any two (2) members of the Board.

### **3.10 Annual Meeting.**

The Corporation's annual meeting shall be held in the first two months of each year. A report shall be presented at the annual meeting summarizing the Corporation's activities for the previous year.

### **3.11 Meetings by Conference Telephone.**

The Board may permit any or all Directors to participate in a meeting of the Board by, or conduct the meeting through, the use of conference telephone or any means of communication by which persons participating in the meeting may hear each other simultaneously during the meeting. A Director participating in the meeting by conference telephone is deemed present in person at the meeting. The chairman of the meeting may establish reasonable rules as to conducting the meeting by telephone.

### **3.12 Notice of Board of Directors Meetings.**

The Corporation shall comply with the requirements of the Montana open meeting laws, pursuant to Section 2-3-201, MCA. et seq. Discussions during Board meetings of issues involving personnel or donors may be closed to the public upon a majority vote of the Board of Directors.

Written or printed notice of every annual, regular and special meeting of the Board of Directors, stating the date, time and place, but not necessarily the purpose of the meeting must be given to each Director not less than two (2) days prior to the date of the meeting. Regardless of whether the meeting is an annual, a regular ~~meeting~~ or a special meeting, if a purpose of the meeting is to consider (1) an amendment to the Articles of Incorporation, (2) a plan of merger, (3) the sale, lease, exchange, or disposition of all, or substantially all of the Corporation's property, or (4) the dissolution of the Corporation, then a notice must be given to each Director at least seven (7) days before the meeting stating the purpose, and the notice must be accompanied by a copy of or summary, if applicable, of the proposed amendment to the Articles of Incorporation, the proposed plan of merger, the transaction for the disposition of the Corporation's property, or proposed plan of dissolution.

- (a) Effective Date. If mailed, notice of any meeting shall be deemed to be effective at the earlier of (i) five (5) days after deposited in the United States mail, addressed to the Director's business office, with postage prepaid, (ii) the date shown on the return receipt (if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the Director), or (iii) the date when received.
- (b) Waiver of Notice. Any Director may waive notice of any meeting. The waiver must be in writing, signed by the Director entitled in the notice, and filed with the minutes or corporate records. A Director's attendance at a meeting waives the Director's right to object to lack of notice or defective notice of the meeting unless the Director, at the beginning of the meeting (or promptly upon arrival), objects to holding the meeting or transacting business at the meeting, and does not vote for or assent to action taken at the meeting.

### **3.13 Quorum.**

A majority of the members of the Board of Directors shall constitute a quorum at all meetings of the Board of Directors. No action shall be taken unless a quorum is present.

### **3.14 Manner of Acting.**

Unless otherwise provided by the Act, the Articles of Incorporation or these Bylaws, the act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board. Each Director shall have one (1) vote. It is the intent of the Board to build consensus on decisions before voting.

### **3.15 Actions Without Meeting.**

Any action required or permitted to be taken at a meeting of Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the Directors entitled to vote with respect to the subject matter thereof. Such consent shall have the same effect as a unanimous vote.

### **3.16 Presumption of Assent.**

A Director who is present at a meeting of the Board at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless the Director's dissent is entered in the minutes of the meeting or unless a written dissent to such action is filed with the person acting as the secretary of the meeting before the adjournment thereof, or unless such dissent is forwarded by registered mail to the secretary of the Corporation immediately after the adjournment of the meeting. The right to dissent shall not apply to a Director who voted in favor of such action.

### **3.17 Chair and Vice Chair of the Board.**

The Board of Directors, by majority vote of the entire Board, ~~may~~ shall appoint from the Directors, a Chair and two Vice Chairs. The Chair shall preside at all meetings of the Board of Directors and shall have such other duties as the Board shall determine. ~~The~~ Either Vice Chair may act as Chair in the absence of the Chair. ~~The Chair and Vice Chair may serve two consecutive, two-year terms.~~

### **3.18 Compensation of Directors.**

~~No Director shall receive any compensation from the Corporation for services rendered as a Director. Directors may be reimbursed for any reasonable expenses incurred by them in the execution of their official duties, including travel expenses. Nothing contained herein shall be construed to preclude any Director from serving the Corporation in any other capacity and receiving reasonable compensation for personal services rendered to the Corporation that are reasonable and necessary to carry out one or more of the tax exempt purposes of the Corporation.~~

## **4. COMMITTEES and TASK FORCES OF THE BOARD**

### **4.1 Committees.**

(a) ~~The standing committees established by the Board of Directors are the Executive Committee; the Safety Committee; and the Finance Committee; the Fund Development Committee; the Communications Committee; and the Stay at Work/Return to Work Committee. The purpose of these committees is to provide ideas for promoting the purposes of the Corporation and to provide in-depth advice on content. Committees shall work with the Board to develop content accurate projects and initiatives.~~

(b) The Board of Directors, by a majority vote, may create additional committees.

(c) The Board of Directors shall elect committee members by a majority vote. Committees may add members upon majority vote of members at a committee meeting, but membership is contingent upon ratification of the election at the next meeting of the Board of Directors. Committees may include non-board members. Committees shall exercise such powers as may be designated by the Board of Directors.

~~(d) The Executive Committee shall be composed of the Chair of the Board, the Vice Chair of the Board, and one more member of the Board elected by majority vote of the Board. Non-voting members of the Executive Committee include the WorkSafeMT executive director, the~~

attorney assigned to advise the board by the Department of Labor and Industry (DLI) and the DLI Employment Relations division administrator.

~~(e) The Chair of the Board shall appoint an elected member of each committee as chair, to serve a two-year term at the pleasure of the Chair of the Board. Committee chairs may serve no more than two consecutive terms.~~

~~(f) Committee chairs are responsible for determining the number and qualifications of committee members and shall recommend new members to the Board for approval.~~

~~(g)~~ (d) A committee member may be removed, with or without cause, if a majority of the members of the committee or the Board vote for removal or if the member misses three consecutive meetings, pursuant to 3.6.

#### **4.2 Restrictions on Committees.**

Each committee may exercise the specific authority which the Board confers upon the committee in the resolution creating the committee; provided, however, a committee may not (1) approve the dissolution, merger, or the sale, pledge, or transfer of all or substantially all of the Corporation's assets; (2) elect, appoint, or remove Directors or fill vacancies on the Board or on any of its committees; or (3) adopt, amend, or repeal the Articles of Incorporation or Bylaws.

#### **4.3 Committee Meetings.**

(a) ~~Two~~ A majority of committee members constitute a quorum for any committee meeting. No action shall be taken by a committee unless a quorum is present.

(b) The sections of these Bylaws governing meetings; notice and waiver of notice; voting requirements; ~~conduct manner of acting~~ of the Board; and action without meetings apply to committees and their members. Committees shall keep regular minutes of their proceedings and report the same to the Board. Committees are subject to all procedural rules governing the operation of the Board.

#### **4.3 Task Forces (new)**

The Board of Directors, by a majority vote, may establish task forces, as necessary. The Chair of the Board shall appoint an elected member of each task force as chair, to serve at the pleasure of the Chair of the Board. Task force chairs are responsible for determining the number and qualifications of task force members and shall recommend new members to the Board for approval.

### **5. OFFICERS**

#### **5.1 Number and Qualifications of Officers.**

The officers of the Corporation shall be an Executive Director the Board Chair, two Vice-Chairs, a Secretary, and a Treasurer, who are elected by a majority of the Board of Directors at the annual meeting. that are employees in designated positions within the Department of Labor and

~~Industry, or successors thereto. The officers will not receive any compensation in addition to their normal state salaries.~~

- (i) The Chair may serve only one 2-year term, unless the Board determines it is in the best interest of the Corporation to elect the Chair for a second 2-year term by a two-thirds vote of the Board. Otherwise, the position of Board Chair shall alternate every two years between a Director who represents labor and a Director who represents management. . An out-going Chair may serve as a Vice Chair.
- (ii) The two Vice Chairs shall be Directors who represent labor and management, respectively, and each may serve two consecutive 2-year terms. When possible, the Board shall elect a Vice Chair to succeed the Chair. A Vice Chair shall be replaced by a Director who represents the same stakeholder group.
- (iii) The Secretary shall be a Director and may serve two consecutive 2-year terms.
- (iv) The Treasurer shall be a Director with expertise in finance and may serve two consecutive 2-year terms.

## **5.2 Duties of the Officers.**

The duties and powers of the officers of the Corporation shall be as follows or shall hereafter be set by ~~resolution of the policies approved by the Board of Directors in agreement with the employees' supervisors within the Department of Labor and Industry:~~

**Executive Director** ~~The Executive Director shall be the principal executive officer of the Corporation, and shall in general supervise and control all of the business and affairs of the Corporation. The Executive Director shall preside at all meetings of the officers of the Corporation and may sign any deed, mortgage, bond, contract or other instrument unless the Board of Directors has expressly granted the authority for such signing and execution to another officer or agent of the Corporation. The Executive Director shall perform all duties incident to the office and such other duties as may be prescribed by the Board of Directors from time to time.~~

**Secretary.** ~~The Secretary shall in good faith (1) create and maintain one or more books for the minutes of the proceedings of the Board; (2) provide that all notices are served in accordance with these Bylaws or as required by law; (3) be a custodian of the corporate records; (4) when requested or required, authenticate any records of the Corporation, and (5) in general perform all duties incident to the office of Secretary and any other duties that the Executive Director or the Board may assign to the Secretary.~~

**Treasurer.** ~~The Treasurer shall: (1) have charge and custody of and be responsible for all funds and securities of the Corporation; (2) receive and give receipts for moneys due and payable to the Corporation from any source, and deposit all moneys in the Corporation's name in banks, trust companies, or other depositories that the Board shall select; and (3) in general perform all of the duties incident to the office of Treasurer and any other duties that the Executive Director or Board may assign to the Treasurer.~~

## **6. CONTRACTS, LOANS, CHECKS AND DEPOSITS; SPECIAL CORPORATE ACTS**

## **6.1 Contracts.**

The Board may authorize any officer, ~~or officers or~~, agent ~~or agents~~, to enter into any contract or execute or deliver any instruments in the name of and on behalf of the Corporation, if approved as required by the Articles of Incorporation, and such authorization may be general or confined to specific instruments.

## **6.2 Checks, Drafts, etc.**

~~All bank accounts and deposit accounts shall be in the name of the Corporation, and, unless specifically directed by the Board of Directors, such depositories may be designated by the Executive Director of the Corporation. All Corporation checks, drafts or other orders for payment must be authorized by two signatures, one of which is the Executive Director and one of which is the Chair of the Board or designee of the Chair.~~

## **6.3 Investments.**

~~The Corporation shall have the right to retain all or any part of any securities or property acquired by it in whatever manner, and to invest and reinvest any funds held by it, according to the judgment of the Board, without being restricted to the class of investments which a Director is or may hereafter be permitted by law to make or any similar restriction; provided, however, that no action shall be taken by or on behalf of the Corporation if such action would result in the denial of the tax exemption under Section 501(c)(3) of the Internal Revenue Code and its Regulations as they now exist, or as they may hereafter be amended. The Board may delegate to the Treasurer, the day to day management of such investments as the Board may authorize.~~

# **7. INDEMNIFICATION AND ADVANCE FOR EXPENSES**

## **7.1 Mandatory Indemnification.**

The Corporation shall indemnify a Director or former Director, who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he or she was a party because he or she is or was a Director of the Corporation against reasonable expenses incurred by him or her in connection with the proceedings.

## **7.2 Permissible Indemnification.**

The Corporation shall indemnify a Director or former Director made a party to a proceeding because he or she is or was a Director of the Corporation, against liability incurred in the proceeding, if determination to indemnify him or her has been made in the Act.

## **7.3 Advance for Expenses.**

Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding, as authorized by the Board of Directors in the specific case, upon receipt of (a) a written affirmation from the Director, officer, employee or agent of his or her good faith belief that he or she is entitled to indemnification as authorized in this Article, and (b) an undertaking by or on behalf of the Director,

officer, employee or agent to repay such amount, unless it shall ultimately be determined that he or she is entitled to be indemnified by the Corporation authorized in this article.

#### **7.4 Indemnification of Officers, Agents and Employees.**

~~An officer of the Corporation who is not a Director is entitled to mandatory indemnification under this Article to the same extent as a Director.~~—The Corporation may also indemnify and advance expenses to an officer, employee or agent of the Corporation who is not a Director to the same extent as a Director or to any extent, consistent with the Act and public policy that may be provided by the general or specific action of the Board or by contract.

#### **7.5 Insurance.**

The Corporation ~~may~~ shall purchase and maintain insurance (a) to insure itself with respect to the indemnification payments it is authorized or obligated to make pursuant to this Article, and (b) on behalf of any person who is or was a Director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a Director, trustee, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise to insure against any liability asserted against person and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify the person against such liability under the provisions of this Article.

### **8. CONFLICT OF INTEREST.**

#### **8.1 Conflict of Interest.**

A Director shall disclose to the Board of Directors any material interest which the Director directly or indirectly has in any person or entity which is a party to a transaction under consideration by the Board of Directors. The interested Director shall abstain from voting on the transaction, provided, however that the Director's presence may be counted in determining whether a quorum is present for purposes of Section 4.13 of these Bylaws.

#### **8.2 Approval of Conflict of Interest Transactions.**

A transaction in which a Director has a conflict of interest may be approved:

- (a) In advance by the vote of the Board of Directors or a committee of the Board if: (i) the material facts of the transaction are disclosed or known to the Board or committee of the Board; and (ii) the Directors approving the transaction in good faith reasonably believe that the transaction is fair to the Corporation; or
- (b) Before or after the transaction is consummated by obtaining approval of: (i) the attorney general; or (ii) a state district court in any action in which the attorney general is joined as a party.

### **9. MISCELLANEOUS**

#### **9.1 Books and Records.**

The Corporation shall keep correct and complete books and records of accounts and shall keep minutes of the proceedings of the Board and committees having any of the authority of the Board. All books and records of the Corporation may be inspected by any Director, or his or her agent or attorney, for any proper purpose at any reasonable time at the main office of the Corporation.

## **9.2 Fiscal Year.**

The fiscal year shall begin ~~July~~ January 1 and end on ~~June 30~~ December 31 each year, unless otherwise established by the Board.

## **9.3 Amending Bylaws.**

The Bylaws of the Corporation may be altered, amended, added to, or repealed by majority vote of the entire Board as is necessary or appropriate to carry out the purposes of the Corporation to the fullest extent permitted by law. No such alteration, amendment, repeal or adoption shall in any way conflict with the purposes of the Corporation as stated in its Articles of Incorporation or otherwise cause the Corporation to lose its qualification as an organization described in Section 501(c)(3) of the Internal Revenue Code.

# **10. DISSOLUTION**

## **10.1 Dissolution.**

Upon dissolution of the Corporation, the Board of Directors shall, after paying or providing for payment of all of the liabilities of the Corporation, distribute all of the remaining assets of the Corporation exclusively for the purposes of the Corporation and the purposes set forth in Section 501(c)(3) of the Internal Revenue Code. Any assets not so distributed shall be disposed of by the District Court of the county in which the principal office of the Corporation is then located, exclusively for the Corporation's purposes or to an organization or organizations organized and operated for the purposes as the Court shall determine.

## **CERTIFICATE OF ADOPTION OF BYLAWS**

The undersigned hereby certifies that the above Bylaws of WorkSafeMT™ ~~FOUNDATION~~ Corporation were duly adopted by unanimous vote of the Board of Directors during the organizational meeting on September 23, 2008, and now constitute the Bylaws of the Corporation. By majority vote of the Board of Directors, the Bylaws of the Corporation were amended on the following dates:

September 2, 2009;

May 6, 2009;

February 3, 2010;

DATED \_\_\_\_.

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Carl Kochman, Chair  
Board of Directors

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